

From: Dave Muller [mailto:Dave.Muller@yolocounty.org]
Sent: Monday, May 23, 2011 12:00 PM
To: Sperber, Jill
Subject: Revised Comment - Mortgage Modifications

Mrs. Sperber:

Thank you for taking the time to explain to me the public comment process – and the following is my revision.

I do not believe it is proper for the Board of Governor's to post on the internet – on an attorney's webpage – that they are facing mere allegations of professional misconduct ethical or appropriate. Further, the caveat of the 'disclaimer' is completely inadequate due to the potential irreparable harm that would be imposed to the attorney professionally and financially.

Imagine the situation where the allegations are unfounded – yet this posting was placed on the attorney's website for several months or several years. By the time it is removed, the attorney's reputation will be in ruins as well as his financial situation. Wouldn't this place the bar in the position of intentionally interfering with an individual's economic interest? Is it possible by posting the "allegations" that the Bar itself could be putting itself at risk of a civil lawsuit?

I believe that at a minimum, should the Bar elect to post the "allegations", that the attorney be afforded some minimal due process before such an act occurs. What the proposed amendment should allow is that before any posting of such allegation occurs, the Bar provides the defendant a probable cause hearing as to the truth of the allegations. This hearing could be considered analogous to a preliminary examination in felony criminal matters – that before the State is allowed to act they must establish some evidence or probable cause to hold that the allegations are true.

These comments are mine and mine alone and do not reflect the opinion of my employer.

David L. Muller

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From: Gary McCurdy [mailto:gmccurdy@capcentral.org]
Sent: Friday, May 20, 2011 11:44 AM
To: Sperber, Jill
Subject: In private capacity, comment on proposal

Dear Ms. Sperber:

I am sending this email from my public email address listed with the State Bar, but I am speaking entirely in my private capacity, not on behalf of or in any way related to the company I work for.

There is a proposal to post online a consumer alert re attorneys charged with significant loan modification misconduct, behavior that would qualify for involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (c) (where an attorney's conduct poses a substantial threat of harm to the interest of the attorney's clients or to the public).

I oppose the proposal but only because it singles out one specific type of misbehavior. Section 6007 authorizes action for a host of bad acts. The mortgage fraud issue is certainly a current issue, but I suspect it is somewhat (if not entirely) related to the meltdown that contributed strongly to the Great Recession. I think the proposal is ill-founded because it appears to be in reaction to a specific (perhaps temporary) crisis, and does not address the real needs of consumers. I am certain that the proponents have the best of intentions, and I do NOT mean to denigrate their desire to provide consumers with valuable information. But I would be in favor of such a proposal that would not be limited to such a specific description of misconduct. If an attorney is being investigated for misappropriation of client funds, or for committing crimes, or for any of a host of other things attorneys should not be doing, the public should be aware of it.

I do see a value in setting a threshold number of complaints being investigated, because there is always the possibility that a disgruntled client will file a complaint, no matter how baseless. One complaint of misappropriation under investigation may not warrant the public alert. Possibly the existence of 15 complaints does. Or somewhere in between. I'm not making a judgment on how many it takes before the consumer should have access to the information--I'm just saying I can understand that at some point, just the quantity of investigations is enough to trigger concern.

My only problem is that, in my opinion, it is too narrow. I believe the public should be able to see that an attorney is under investigation for at least X number of complaints of any type of misbehavior. Perhaps 15 investigations of complaints of misappropriation or mishandling of mortgage modifications is the correct threshold, but maybe 3 investigations pending on sexual misconduct with a client would be enough. Perhaps investigation of one felony involving moral turpitude would be enough. As I said, I don't have an opinion on the quantity at which the public should be better informed.

What I fear is that this proposal addresses one specific problem. Another wave of some other innovative misconduct comes along next year, and another proposal for THAT problem will be presented. And so on. Someday the proposals could take up more space than an annotated Penal Code. It would be much better, in my opinion, to adopt a proposal that allows posting the fact of investigations when the number of investigations pending in any category reaches the threshold adopted for that category.

I do not have any stake in this proposal. I do not practice in that area of law and have never handled a

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loan modification for a client. My interest is strictly that I do not like to see piecemeal responses to crises du jour. The real issue is that at some point, where there is smoke, there is need for folks to evacuate, because there is a substantial possibility that there is a fire. But it should not matter whether the suspected fuel of the suspected fire is coal or rubber or gasoline or pine trees or rubbish or underbrush. We don't warn people to evacuate if the fire is consuming fir trees, but not if it is consuming pine trees. Fire danger is fire danger. The LEVEL of fire danger may differ from one source to another, and the urgency of when to commence evacuation may vary depending on the fuel. But the rules won't say "Warn if the imminent fire is from pine trees, but not if the imminent fire is from fir trees." We say, "Warn if fire appears imminent."

Thanks!
Gary McCurdy
54090

From: Mark E. Saltzman [mailto:businessattorney@yahoo.com]
Sent: Tuesday, May 17, 2011 4:40 PM
To: Sperber, Jill
Subject: Proposed Online Posting of Consumer Alert re Attorneys Charged with Significant Loan Modification Misconduct

Dear Ms Sperber:

Pursuant to the notice for public comment on the State Bar website, the following is my response to the proposed Online Posting of Consumer Alert re Attorneys Charged with Significant Loan Modification Misconduct. I am unequivocally against it.

The California State Bar should have only two public views of its participants. First, there should be individuals who are welcome to practice law and treated with the dignity and respect that are due an officer of the court. Second, there are those individuals who have been deemed unfit to be among the State Bar roles.

The proposed term (along with the current public reporting system) is a debasement of the State Bar and its members. These "scarlet letters" on the State Bar website let the public know that there are members among the State Bar, who have engaged in gross levels of misconduct, but the State Bar is allowing them to practice law. Apparently, the State Bar is saying, "This lawyer is unfit to practice, but we are letting him or her do so anyway. In any event, don't hire this lawyer."

Hanging out the State Bar's dirty laundry does little good for anyone. It confirms the public's perception that lawyers can be unethical, yet continue to practice law. It confirms the members (particularly small firm members) perception that the State Bar will not protect its members from unjust scrutiny and prosecution. It confirms to the public that lawyers, in California, should not be treated with the dignity and respect of their office, even where the State Bar has decided that they are deserving of continued practice.

I am against the proposed posting of consumer alerts re: attorneys charged with significant loan modification misconduct. I participate in the mandatory State Bar with great respect for the organization. I think it is appropriate that the organization adopts a posture of respecting its members.

Please contact me if you have any comments or questions.

Sincerely,

Mark Saltzman
SBN 155612

Law Offices of Mark E. Saltzman

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